

**House File 381 - Introduced**

HOUSE FILE 381

BY T. OLSON

**A BILL FOR**

1 An Act relating to the rights of parties to private and  
2 public construction contracts and including applicability  
3 provisions.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 573B.1 Title.

2 This chapter shall be known as the "*Iowa Fairness in Private*  
3 *Construction Contracts Act*".

4 Sec. 2. NEW SECTION. 573B.2 Definitions.

5 For the purposes of this chapter:

6 1. "*Construction*" means furnishing labor, equipment,  
7 material, or supplies used or consumed for the design,  
8 construction, alteration, renovation, repair, or maintenance of  
9 a building, structure, appurtenance, or other improvement to  
10 real property, including any moving, demolition, or excavation.

11 2. "*Contract*" means a contract or agreement concerning  
12 construction entered into by and between an owner and  
13 a contractor, a contractor and a subcontractor, or a  
14 subcontractor and another subcontractor.

15 3. "*Contractor*" means a person or entity that engages in  
16 the business of construction and has a contract with an owner  
17 of the real property or with a trustee, agent, or spouse of an  
18 owner.

19 4. "*Owner*" means the record titleholder or a person or  
20 entity for whose use or benefit any construction is undertaken,  
21 who has the capacity to contract, including a guardian.

22 5. "*Private construction*" means construction of or on  
23 private property.

24 6. "*Retainage*" means money earned by a contractor or  
25 subcontractor but withheld to ensure proper performance by the  
26 contractor or subcontractor.

27 7. "*Subcontractor*" means a person or entity that engages  
28 in the business of construction, except a person or entity  
29 entering into a contract directly with the owner of the real  
30 property.

31 Sec. 3. NEW SECTION. 573B.3 Private construction contracts  
32 — payment — provisions against public policy — failure to pay.

33 1. A person or entity that enters into a contract for  
34 private construction shall make all payments pursuant to the  
35 terms of the contract and in accordance with this chapter.

1     2. The following provisions in a contract for private  
2 construction are void and unenforceable as contrary to public  
3 policy:

4     *a.* A provision that purports to waive, release, or  
5 extinguish the right to resolve disputes through litigation  
6 in court or substantive or procedural rights in connection  
7 with such litigation. However, a contract may require  
8 binding arbitration as a substitute for litigation or require  
9 nonbinding alternative dispute resolution as a prerequisite to  
10 litigation.

11    *b.* A provision that purports to waive, release, or  
12 extinguish rights provided by chapter 660, except that a  
13 contract may require a contractor or subcontractor to provide a  
14 waiver or release of such rights as a condition for payment,  
15 but only to the extent of the amount of payment received.

16    *c.* A provision that purports to waive, release, or  
17 extinguish rights of subrogation for losses or claims covered  
18 or paid by liability or workers' compensation insurance unless  
19 permitted under chapter 87 or Title XIII, subtitle 1.

20     3. A provision in a contract for private construction  
21 providing that a payment from a contractor or subcontractor  
22 to a subcontractor is contingent or conditioned upon receipt  
23 of a payment from any other private party is no defense to a  
24 claim to enforce a mechanic's lien or bond to secure payment of  
25 claims pursuant to chapter 660.

26     4. A contract for private construction shall provide that  
27 payment of amounts due a contractor from an owner, except  
28 retainage, shall be made within thirty days after the owner  
29 receives a timely, properly completed request for an undisputed  
30 payment.

31     5. If the owner fails to pay a contractor within thirty  
32 days pursuant to subsection 4, the owner shall pay interest to  
33 the contractor beginning on the thirty-first day after receipt  
34 of the request for payment, computed at the rate of eighteen  
35 percent per annum on the undisputed payment.

1 6. A contractor shall pay its subcontractors any amounts  
2 due within seven business days of receipt of payment from the  
3 owner, including payment of retainage, if retainage is released  
4 by the owner, if the subcontractor has provided a timely,  
5 properly completed request for an undisputed payment to the  
6 contractor.

7 7. If a contractor fails to pay a subcontractor within  
8 seven business days pursuant to subsection 6, the contractor  
9 shall pay interest to the subcontractor beginning on the eighth  
10 business day after receipt of payment by the contractor,  
11 computed at the rate of eighteen percent per annum on the  
12 undisputed payment.

13 8. The provisions of subsections 6 and 7 apply to a payment  
14 from a subcontractor to its subcontractor.

15 Sec. 4. NEW SECTION. 573B.4 Retainage.

16 1. An owner, contractor, or subcontractor may withhold  
17 no more than ten percent retainage from the amount of any  
18 undisputed payment due.

19 2. If an owner, contractor, or subcontractor fails to pay  
20 retainage pursuant to the terms of a contract for private  
21 construction or as required by this chapter, the owner,  
22 contractor, or subcontractor shall pay interest to the  
23 contractor or subcontractor to whom payment was due, beginning  
24 on the first business day after the payment was due, at a rate  
25 of eighteen percent per annum.

26 Sec. 5. NEW SECTION. 573B.5 Suspension of performance.

27 If any undisputed payment is not made within seven business  
28 days after the payment date established in a contract for  
29 private construction or in this chapter, the contractor and any  
30 subcontractors may provide written notice to the owner and, in  
31 the case of a subcontractor, written notice to the contractor.  
32 Seven business days after the provision of the written notice,  
33 the contractor or subcontractor, without prejudice to any  
34 other available remedy, may suspend further performance  
35 until payment, including applicable interest, is made. The

1 contract period for each contract affected by the suspension  
2 shall be extended for a period equal to the duration of the  
3 suspension, and the contract sum for each affected contract  
4 shall be increased by the suspending party's reasonable costs  
5 of demobilization, delay, and remobilization.

6 Sec. 6. NEW SECTION. 573B.6 **Action or arbitration to**  
7 **enforce.**

8 In any action to enforce the provisions of this chapter,  
9 including arbitration, the court or arbitrator shall award  
10 costs and reasonable attorney fees to the prevailing party.  
11 Venue of such an action shall be in the county where the  
12 applicable real property is located. The hearing in such an  
13 arbitration shall be held in the county where the applicable  
14 real property is located.

15 Sec. 7. NEW SECTION. 573B.7 **Waiver or variance prohibited.**

16 The rights and duties prescribed by this chapter shall not be  
17 waived or varied under the terms of a contract. The terms of a  
18 contract waiving or varying the rights and duties prescribed by  
19 this chapter shall be unenforceable.

20 Sec. 8. NEW SECTION. 573B.8 **Applicability.**

21 The provisions of this chapter do not apply to single-family  
22 residential housing and multifamily residential housing of four  
23 units or less. The provisions of this chapter shall not apply  
24 to public works or public improvement projects.

25 Sec. 9. NEW SECTION. 573C.1 **Title.**

26 This chapter shall be known as the "*Iowa Fairness in Public*  
27 *Construction Contracts Act*".

28 Sec. 10. NEW SECTION. 573C.2 **Definitions.**

29 For the purposes of this chapter:

30 1. "*Construction*" means furnishing labor, equipment,  
31 material, or supplies used or consumed for the design,  
32 construction, alteration, renovation, repair, or maintenance of  
33 a building, structure, appurtenance, or other improvement to  
34 real property, including any moving, demolition, or excavation.

35 2. "*Contract*" means a contract or agreement concerning

1 construction entered into by and between an owner and  
2 a contractor, a contractor and a subcontractor, or a  
3 subcontractor and another subcontractor.

4 3. "*Contractor*" means a person or entity that engages in  
5 the business of construction and has a contract with an owner  
6 of the real property or with a trustee, agent, or spouse of an  
7 owner.

8 4. "*Owner*" means the record titleholder or a person or  
9 entity for whose use or benefit any construction is undertaken,  
10 who has the capacity to contract, including a guardian.

11 5. "*Public construction*" means construction under the  
12 control of a public entity and paid for in whole or in part with  
13 funds of a public entity.

14 6. "*Public entity*" means the state, an agency of the state,  
15 or a political subdivision.

16 7. "*Subcontractor*" means a person or entity that engages  
17 in the business of construction, except a person or entity  
18 entering into a contract directly with the owner of the real  
19 property.

20 Sec. 11. NEW SECTION. 573C.3 Public construction contracts  
21 — payment — provisions against public policy — failure to pay.

22 1. A person or entity that enters into a contract for public  
23 construction shall make all payments pursuant to the terms of  
24 the contract and in accordance with this chapter.

25 2. The following provisions in a contract for public  
26 construction are void and unenforceable as contrary to public  
27 policy:

28 a. A provision that purports to waive, release, or  
29 extinguish the right to resolve disputes through litigation in  
30 court or substantive or procedural rights in connection with  
31 such litigation. However, a contract may require nonbinding  
32 alternative dispute resolution as a prerequisite to litigation.

33 b. A provision that purports to waive, release, or  
34 extinguish rights to file a claim against a payment or  
35 performance bond, except that a contract may require a

1 contractor or subcontractor to provide a waiver or release of  
2 such rights as a condition for payment, but only to the extent  
3 of the amount of payment received.

4 *c.* A provision that purports to waive, release, or  
5 extinguish rights of subrogation for losses or claims covered  
6 or paid by liability or workers' compensation insurance unless  
7 permitted under chapter 87 or Title XIII, subtitle 1.

8 *d.* A provision that purports to waive the right of a party  
9 to collect damages for delays caused by another party.

10 3. A contract for public construction shall provide that  
11 payment of amounts due a contractor from an owner shall be made  
12 within thirty days after the owner receives a timely, properly  
13 completed request for an undisputed payment according to terms  
14 of the contract, unless extenuating circumstances exist which  
15 would preclude approval of payment within thirty days. If such  
16 extenuating circumstances exist, payment shall be made within  
17 forty-five days after the owner receives a payment request.

18 4. The architect or engineer of record or agent of the owner  
19 shall review, approve, and forward a request for an undisputed  
20 payment to the owner within seven business days of receipt from  
21 the contractor.

22 5. If an owner fails to pay a contractor within the time  
23 period set forth in subsection 3, the owner shall pay interest  
24 computed at the rate of eighteen percent per annum on the  
25 undisputed payment to the contractor beginning on the day  
26 following the end of the time period set forth in subsection 3.

27 6. A contractor shall pay its subcontractors any amounts  
28 due within seven business days of receipt of payment from the  
29 owner, if the subcontractor has provided a timely, properly  
30 completed request for an undisputed payment to the contractor.

31 7. If a contractor fails to pay a subcontractor within  
32 seven business days pursuant to subsection 6, the contractor  
33 shall pay interest to the subcontractor beginning on the eighth  
34 business day after receipt of payment by the contractor,  
35 computed at the rate of eighteen percent per annum on the

1 undisputed payment.

2 8. The provisions of subsections 6 and 7 shall apply to a  
3 payment from a subcontractor to its subcontractor.

4 Sec. 12. NEW SECTION. 573C.4 **Suspension of performance.**

5 If any undisputed payment is not made within seven business  
6 days after the payment date established in a contract for  
7 public construction or in this chapter, the contractor and any  
8 subcontractors may provide written notice to the owner and, in  
9 the case of a subcontractor, written notice to the contractor.  
10 Seven business days after the provision of the written notice,  
11 the contractor or subcontractor, without prejudice to any  
12 other available remedy, may suspend further performance  
13 until payment, including applicable interest, is made. The  
14 contract period for each contract affected by the suspension  
15 shall be extended for a period equal to the duration of the  
16 suspension, and the contract sum for each affected contract  
17 shall be increased by the suspending party's reasonable costs  
18 of demobilization, delay, and remobilization.

19 Sec. 13. NEW SECTION. 573C.5 **Action or arbitration to**  
20 **enforce.**

21 In any action to enforce the provisions of this chapter,  
22 including arbitration, between a contractor and a subcontractor  
23 or a subcontractor and a subcontractor, the court or arbitrator  
24 shall award costs and reasonable attorney fees to the  
25 prevailing party. Venue of such an action shall be in the  
26 county where the applicable real property is located. The  
27 hearing in such an arbitration shall be held in the county  
28 where the applicable real property is located.

29 Sec. 14. NEW SECTION. 573C.6 **Waiver or variance prohibited.**

30 The rights and duties prescribed by this chapter shall not  
31 be waivable or varied under the terms of a contract. The terms  
32 of a contract waiving the rights and duties prescribed by this  
33 chapter shall be unenforceable.

34 Sec. 15. NEW SECTION. 573C.7 **Applicability.**

35 This chapter does not apply to retainage or the retention

1 of funds as those terms are used in chapter 573. This chapter  
2 shall not be construed to prohibit the parties to a contract  
3 for public construction from contracting for the applicability  
4 of the provisions of chapter 573A.

5 Sec. 16. APPLICABILITY. This Act applies to construction  
6 contracts entered into on or after the effective date of this  
7 Act.

8 EXPLANATION

9 This bill relates to the rights of parties to private and  
10 public construction contracts.

11 The bill creates the "Iowa Fairness in Private Construction  
12 Contracts Act". The bill requires a person or entity that  
13 enters into a contract for private construction to make  
14 all payments pursuant to the terms of the contract and in  
15 accordance with the bill. The bill provides that certain  
16 provisions in a private construction contract are void and  
17 unenforceable as contrary to public policy, including a  
18 provision that waives, releases, or extinguishes the right  
19 to resolve disputes through litigation, although arbitration  
20 may be required as a prerequisite to or a substitution for  
21 litigation; a provision that waives, releases, or extinguishes  
22 rights provided by Code chapter 660 relating to quo warranto  
23 rights, although a contractor or subcontractor may be required  
24 to waive such rights as a condition for payment, to the extent  
25 of the amount of payment received; and a provision that waives,  
26 releases, or extinguishes rights of subrogation for losses or  
27 claims covered or paid by liability or workers' compensation  
28 insurance unless otherwise permitted under Code chapter 87  
29 or Code Title XIII, subtitle 1, relating to regulation of  
30 insurance.

31 The bill provides that a provision in a contract for  
32 private construction making a payment from a contractor or  
33 subcontractor to a subcontractor contingent or conditioned  
34 upon receipt of a payment from any other private party is no  
35 defense to a claim to enforce a mechanic's lien or bond to

1 secure payment of claims pursuant to Code chapter 660. The  
2 bill provides that a contract for private construction must  
3 provide that payment of amounts due to a contractor from an  
4 owner, except retainage, must be made within 30 days after  
5 the owner receives a timely, properly completed request for  
6 an undisputed payment. The bill provides that if the owner  
7 of real property subject to a private construction contract  
8 fails to pay a contractor within 30 days following receipt of a  
9 timely, properly completed request for an undisputed payment,  
10 the owner must pay interest to the contractor beginning on the  
11 31st day after receipt of the request for payment, at the rate  
12 of 18 percent per annum on the undisputed payment. The bill  
13 requires a contractor to pay its subcontractors any amounts  
14 due within seven business days of receipt of payment from the  
15 owner, including payment of retainage, if the subcontractor has  
16 provided a timely, properly completed request for an undisputed  
17 payment to the contractor. The bill provides that if a  
18 contractor fails to pay a subcontractor within seven business  
19 days, the contractor must pay interest to the subcontractor  
20 beginning on the eighth business day after receipt of payment  
21 by the contractor, computed at the rate of 18 percent per annum  
22 on the undisputed payment.

23 The bill defines "retainage" for the purposes of the "Iowa  
24 Fairness in Private Construction Contracts Act" as money  
25 earned by a contractor or subcontractor but withheld to ensure  
26 proper performance by the contractor or subcontractor. The  
27 bill provides that an owner, contractor, or subcontractor may  
28 withhold no more than 10 percent retainage from the amount  
29 of any undisputed payment due. The bill provides that if an  
30 owner, contractor, or subcontractor fails to pay retainage  
31 as required, they must pay interest beginning on the first  
32 business day after the payment was due, at a rate of 18 percent  
33 per annum.

34 The bill provides that if an undisputed payment is not  
35 made within seven business days after payment is due, the

1 contractor and any subcontractors may provide written notice  
2 to the owner and, if payment is not made for another seven  
3 business days, may suspend further performance until payment,  
4 including applicable interest, is made. The bill provides  
5 that the contract period shall be extended for a period equal  
6 to the duration of the suspension, and the contract sum will  
7 be increased by the suspending party's reasonable costs of  
8 demobilization, delay, and remobilization. The bill provides  
9 that in any action to enforce the provisions of the bill,  
10 including arbitration, the court or arbitrator will award costs  
11 and reasonable attorney fees to the prevailing party. The bill  
12 provides that such an action will take place in the county  
13 where the applicable real property is located.

14 The bill provides that the rights and duties prescribed  
15 by the bill cannot be waived or varied under the terms  
16 of a contract, and a provision of a contract doing so is  
17 unenforceable. The bill specifies that these provisions of  
18 the bill do not apply to single-family residential housing and  
19 multifamily residential housing of four units or less or public  
20 works or public improvement projects.

21 The bill creates the "Iowa Fairness in Public Construction  
22 Contracts Act". The bill requires a person or entity that  
23 enters into a contract for public construction to make  
24 all payments pursuant to the terms of the contract and in  
25 accordance with the bill. The bill provides that certain  
26 provisions in a public construction contract are void and  
27 unenforceable as contrary to public policy, including a  
28 provision that waives, releases, or extinguishes the right  
29 to resolve disputes through litigation, although arbitration  
30 may be required as a prerequisite to litigation; a provision  
31 that waives, releases, or extinguishes rights to file a claim  
32 against a payment or performance bond, although a contractor  
33 or subcontractor may be required to waive such rights as a  
34 condition for payment, to the extent of the amount of payment  
35 received; a provision that waives, releases, or extinguishes

1 rights of subrogation for losses or claims covered or paid by  
2 liability or workers' compensation insurance unless otherwise  
3 permitted under Code chapter 87 or Code Title XIII, subtitle  
4 1, relating to regulation of insurance; and a provision that  
5 waives the right to collect damages for delays caused by  
6 another party.

7 The bill provides that a contract for public construction  
8 must provide that payment of amounts due a contractor from an  
9 owner must be made within 30 days after the owner receives a  
10 timely, properly completed request for an undisputed payment,  
11 unless extenuating circumstances exist which would preclude  
12 approval of payment within 30 days, in which case payment  
13 must be made within 45 days. The bill provides that the  
14 architect or engineer of record or agent of the owner of a  
15 public construction project must review, approve, and forward  
16 a request for an undisputed payment to the owner within  
17 seven business days of receiving it from the contractor. The  
18 bill provides that if the owner of real property subject to  
19 a public construction contract fails to pay a contractor  
20 within the allotted time period, the owner must pay interest  
21 to the contractor beginning on the day after the end of the  
22 allotted time period at the rate of 18 percent per annum on the  
23 undisputed payment amount. The bill requires a contractor to  
24 pay its subcontractors any amounts due within seven business  
25 days of receipt of payment from the owner if the subcontractor  
26 has provided a timely, properly completed request for an  
27 undisputed payment to the contractor. The bill provides  
28 that if a contractor fails to pay a subcontractor within  
29 seven business days, the contractor must pay interest to the  
30 subcontractor beginning on the eighth business day after  
31 receipt of payment by the contractor, computed at the rate of  
32 18 percent per annum on the undisputed payment amount.

33 The bill provides that if an undisputed payment is not  
34 made within seven business days after payment is due, the  
35 contractor and any subcontractors may provide written notice

1 to the owner and, if payment is not made for another seven  
2 business days, may suspend further performance until payment,  
3 including applicable interest, is made. The bill provides  
4 that the contract period will be extended for a period equal  
5 to the duration of the suspension, and the contract sum will  
6 be increased by the suspending party's reasonable costs of  
7 demobilization, delay, and remobilization. The bill provides  
8 that in any action to enforce the provisions of the bill,  
9 including arbitration, between a contractor and a subcontractor  
10 or a subcontractor and a subcontractor, the court or arbitrator  
11 will award costs and reasonable attorney fees to the prevailing  
12 party. The bill provides that such an action will take place  
13 in the county where the applicable real property is located.

14 The bill provides that the rights and duties prescribed  
15 by the bill cannot be waived or varied under the terms  
16 of a contract, and a provision of a contract doing so is  
17 unenforceable. The bill specifies that the provisions of the  
18 "Iowa Fairness in Public Construction Contracts Act" do not  
19 apply to retainage or the retention of funds as those terms are  
20 used in Code chapter 573. The bill specifies that the bill is  
21 not to be construed to prohibit the parties to a contract for  
22 public construction from contracting for the applicability of  
23 the provisions of Code chapter 573A, relating to stoppage of  
24 public contracts in the event of an emergency.

25 The bill applies to construction contracts entered into on  
26 or after the effective date of the bill.